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4 UNITED STATES DISTRICT COURT

5 DISTRICT OF NEVADA

6 DONALD DELONEY,

Case No. 3:16-cv-000732-MMD-WGC

7 Plaintiff,

8 v.
9 RICHARD SNYDER, et. al.,

REPORT & RECOMMENDATION OF
U.S. MAGISTRATE JUDGE

10 Defendants.

11

12 This Report and Recommendation is made to the Honorable Miranda M. Du, United States
13 District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C.
14 § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

15 Before the court is Plaintiff's Motion for Injunctive Relief, Preliminary Injunction or
16 Permanent Injunction against Richard Snyder, Chaplain. (ECF No. 10.) Defendant Richard Snyder
17 filed a response. (ECF No. 18.) Plaintiff did not file a reply brief.

18 After a thorough review, it is recommended that Plaintiff's motion be denied as moot.

19 **I. BACKGROUND**

20 Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC),
21 proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 15.) The events
22 giving rise to this action took place while Plaintiff was housed at Warm Springs Correctional
23 Center (WSCC). (*Id.*) Defendant is WSCC Chaplain Richard Snyder.

24 In his complaint, Plaintiff alleges that from January 1, 2016 to March 3, 2016, he was the
25 appointed inmate facilitator for Muslim inmate services at WSCC. (ECF No. 15 at 3.) He avers
26 that Snyder created an unwritten policy requiring Plaintiff to submit a handwritten copy of each
27 word he planned to say during Muslim services one week prior to the scheduled services, and if
28 he failed to do so, he would not be permitted to speak at the services at all. (*Id.* at 3-4.) Snyder

1 allegedly told Plaintiff that if he deviated at all from the written statement, he would be removed
2 from his facilitator position and written up for disciplinary charges. (*Id.* at 4.) On two occasions,
3 Plaintiff did not provide a written statement to Snyder a week in advance, and Snyder refused to
4 permit Plaintiff to speak as facilitator. (*Id.*) He claims that he filed a grievance, and Snyder became
5 enraged and relieved Plaintiff of his facilitator position. (*Id.* at 5.)

6 Based on these allegations, the court allowed Plaintiff to proceed with claims under the
7 First Amendment, the Religious Land Use and Institutionalized Persons Act (RLUIPA), as well as
8 a retaliation claim. (Screening Order, ECF No. 14.)

9 Plaintiff also alleges that Snyder intentionally prohibited Muslim inmates from religiously
10 communicating during their service while Christian inmates are permitted to do so. (*Id.* at 7-9.)
11 The court allowed Plaintiff to proceed with an equal protection claim based on these allegations.
12 (ECF No. 14.)

13 Finally, Plaintiff alleges that between October 3, 2015 and May 20, 2016, he was the inmate
14 facilitator for Muslim services, and he asked Snyder to reschedule the Jumah Friday Muslim prayer
15 services from 12:00 to 1:00 p.m. to 12:30 p.m. to 1:30 p.m., to more correctly reflect the
16 appropriate time Muslims are supposed to pray in accordance with Islamic law and tradition. (ECF
17 No. 15 at 11-12.) Snyder refused. (*Id.*) Based on these allegations, Plaintiff was permitted to
18 proceed with additional claims under the First Amendment and RLUIPA. (ECF No. 14.)

19 In his motion for injunctive relief, Plaintiff claims that Snyder suspended Islamic services
20 at WSCC until he could find an outside Imam to preside over the service. (ECF No. 10 at 2.)
21 Plaintiff claims that NDOC has never required an outside Imam in the past, and it is not required
22 by his faith. (*Id.* at 2-4.) He asks for Snyder to be removed from his duties until this case is heard.
23 (*Id.* at 4.)

24 **II. LEGAL STANDARD**

25 Rule 65 of the Federal Rules of Civil Procedure provide that a “court may issue a
26 preliminary injunction only on notice to the adverse party.” Fed. R. Civ. P. 65(a)(1).

27 The purpose of a preliminary injunction is to preserve the status quo if the balance of
28 equities so heavily favors the moving party that justice requires the court to intervene to secure the

1 positions until the merits of the action are ultimately determined. *University of Texas v. Camenisch*,
2 451 U.S. 390, 395 (1981). A preliminary injunction is an “extraordinary and drastic remedy” that
3 is “never awarded as of right.” *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citations omitted).
4 Instead, in every case, the court “must balance the competing claims of injury and must consider
5 the effect on each party of the granting or withholding of the requested relief.” *Winter v. Natural*
6 *Resources Defense Council, Inc.*, 555 U.S. 7, 23 (2008) (internal quotation marks and citation
7 omitted). The instant motion requires that the court determine whether Plaintiff has established the
8 following: (1) he is likely to succeed on the merits; (2) he is likely to suffer irreparable harm in the
9 absence of preliminary relief; (3) the balance of equities tips in his favor; and (4) an injunction is
10 in the public interest. *Id.* at 20 (citations omitted).

11 The Prison Litigation Reform Act (PLRA) mandates that prisoner litigants satisfy
12 additional requirements when seeking preliminary injunctive relief against prison officials. The
13 PLRA provides, in relevant part:

14 Preliminary injunctive relief must be narrowly drawn, extend no further than
15 necessary to correct the harm the court finds requires preliminary relief, and be the
16 least intrusive means necessary to correct that harm. The court shall give substantial
17 weight to any adverse impact on public safety or the operation of a criminal justice
18 system caused by the preliminary relief and shall respect the principles of comity
19 set out in paragraph (1)(B) in tailoring any preliminary relief.

20 18 U.S.C. § 3626(a)(2). Thus, § 3626(a)(2) limits the court’s power to grant preliminary injunctive
21 relief to inmates. See *Gilmore v. People of the State of California*, 220 F.3d 987, 998 (9th Cir.
22 2000). “Section 3626(a)...operates simultaneously to restrict the equity jurisdiction of federal
23 courts and to protect the bargaining power of prison administrators-no longer may courts grant or
24 approve relief that binds prison administrators to do more than the constitutional minimum.” *Id.* at
25 999.

III. DISCUSSION

26 While Snyder claims that he did not entirely cancel Muslim services at WSCC, Plaintiff
27 has a strong argument that he has a likelihood of success on the merits of his First Amendment
28 and RLUIPA claims. He presents a memorandum from Snyder to all Islamic inmates stating that
Muslim services were suspended until a volunteer could be found to lead them, which
contradicts Snyder’s current position. (ECF No. 10 at 9.) Nevertheless, the court finds that

1 Plaintiff's motion should be denied as moot. In his response to Plaintiff's motion, defendant
2 Snyder states in his declaration that Plaintiff was transferred to Northern Nevada Correctional
3 Center in July of 2017. (ECF No. 18-1 at 2 ¶ 4.) Claims for injunctive relief related to a prison's
4 policies are moot where a prisoner has been transferred to another facility and shows no
5 reasonable expectation of return. *Johnson v. Moore*, 948 F.2d 517, 522 (9th Cir. 1991) (per
6 curiam). Plaintiff did not file a reply brief indicating there was any reasonable expectation he
7 would be sent back to WSCC and subject to the alleged ban on Muslim services. *See Murphy v.*
8 *Hunt*, 455 U.S. 478, 482 (1982) (exception to mootness that case is capable of repetition yet
9 evading review limited to circumstances where there is a reasonable expectation that the same
10 complaining party would be subject to the same action again).

IV. RECOMMENDATION

IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING AS MOOT** Plaintiff's motion for injunctive relief (ECF No. 10).

14 The parties should be aware of the following:

15 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
16 this Report and Recommendation within fourteen days of receipt. These objections should be titled
17 "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by
18 points and authorities for consideration by the district judge.

19 2. That this Report and Recommendation is not an appealable order and that any notice of
20 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
21 until entry of judgment by the district court.

23 DATED: October 10, 2017.

William G. Cobb
WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE